



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6062876

Date: JAN. 7, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the appeal and denied seven subsequent motions to reopen.¹ Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The matter is now before us on an eighth motion to reopen. With the motion, the Petitioner submits additional documentation and a brief asserting that she is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

¹ *Matter of T-A-Y-*, ID# 2525500 (AAO Mar. 26, 2019) was our most recent decision in this matter.

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Additionally, in order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

Furthermore, with respect to demonstrating eligibility for a national interest waiver pursuant to section 203(b)(2)(B)(i) of the Act, we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

With the instant motion, the Petitioner resubmits her April 2005 diploma from [] University. This diploma states that she completed a "one year course of studies" and received a "Master's degree" in Public Administration. In addition, she resubmits the December 2017 "credential evaluation report" from USCES, LLC stating that her "Archival Certificate – Master's Degree in Public Administration, issued by the []" in April 2005 is the equivalent of a "Master's Degree in Public Administration awarded by regionally accredited universities in the United States."

In our previous decisions, we noted that that the aforementioned evaluation from USCES did not specify the number of semesters the Petitioner completed or the number of academic credits she was awarded. This evaluation also did not list the educational documents from [] University that the evaluator reviewed in reaching his conclusion. For example, the evaluation stated that it was based on an "Archival Certificate" from "the []". Accordingly, the record did not show that the credentials reviewed by the evaluator were the same educational

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

³ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

documents that were submitted to the record in this case. The Petitioner was informed that she had not resolved these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

On motion, the Petitioner requests that we accept her diploma from [] University because USCES “confirm[ed] it is the equivalent of U.S. Ma[s]ter[’s] Degree with all the credits completed to receive the degree,” but she has not identified any new facts supported by documentary evidence to meet the requirements of a motion to reopen. Nor has she presented information or evidence resolving the ambiguities discussed above. As explained in our previous decisions, because the USCES evaluation did not adequately explain its conclusion that the Petitioner’s foreign diploma is equivalent to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A), it is insufficient to establish her eligibility as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner’s motion repeats previous arguments that she satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). As discussed below, our review of the documentation provided on motion does not show that she meets at least three criteria.

In our prior decisions, we concluded that the Petitioner had satisfied only one regulatory criterion: 8 C.F.R. § 204.5(k)(3)(ii)(A). With regard to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (E), the Petitioner’s current motion to reopen contends that her membership in the [] School [] meets those criteria.⁵ She offers a website screenshot from [] listing Bulgarians who are members of the []. As noted in our prior decision, the Petitioner’s [] membership post-dates the filing of the petition. Eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, the documentation offered on motion does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As noted in our prior decisions, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Furthermore, we explained in our decisions that she had not met the requisite three prongs set forth in the *Dhanasar* analytical framework. On motion, the Petitioner does not offer new facts or evidence relevant to our findings. Instead, the Petitioner resubmits a letter from [] [] that we previously considered in our decision denying the Petitioner’s fourth motion to reopen. In addition to not establishing the Petitioner’s eligibility for the EB-2 classification, the aforementioned letter does not render her eligible for a national interest waiver under the framework set forth in *Dhanasar*.

⁵ She previously submitted a July 2017 certificate stating that she “has attained alumni status from [] School by successfully completing the 14th Session of the []”

III. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.